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## **I. PREFACE**

With the inception of the National Performance Review (NPR) and, more specifically, Procurement Reform, the acquisition of products and services in the Federal Government is ever changing. The vision for the Federal Acquisition System is to deliver on a timely basis the “best value” product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives.

The following major changes have occurred since the signing of the Federal Acquisition Streamlining Act of 1994 and Federal Acquisition Reform Act of 1995:

- Small Purchasing is now referred to as Simplified Acquisition Procedures (SAP);
- SAP threshold increased from \$25,000 to \$100,000;
- Emphasis in purchasing commercial products or services;
- Acquisition of commercial products or services may be obtained using SAP up to \$5 million dollars;
- Performance-based contracts are to be used to the maximum extent practicable; and,
- Best value is encouraged in source selection instead of the traditional method of awarding a contract to the low responsive and responsible bidder.

The objective of the Contracting segment of this week’s training is not intended to make you a Contract Specialist or Contracting Officer. That’s our job! During this segment of the training, we will provide an overview of the contracting process and highlight what you need to know (or what you have to do) to obtain products or services to meet the needs of your programs. The acquisition process is a “team effort” and you are part of the team. The overview should provide sufficient information for you to plan, write a specification or performance work statement, receipt for delivery of products or services, and monitor contractor performance.

Both Program/Project Managers and Contracting Officers are given responsibility in acquiring products and services. Because both have heavy responsibilities, we need to understand their differences and similarities to see how they complement each other in their joint role of acquisition.

Simply stated, Program Managers are charged with obtaining the necessary items to fulfill Government needs. For more complex acquisitions, Program Managers are required to develop an acquisition strategy which is an overall plan for satisfying the mission need. With support from various specialists, they must estimate costs, obtain budget authority, and provide requirements and funding to the Contracting Officer to obtain products and services by contract. Although Program Managers have overall responsibility for acquisition, they do not have authority to enter into contractual agreements with firms for the acquisition of products or services. The Contracting Officer is the official agent to enter into contracts for the Federal Government with authority based on legislation and implemented in accordance with the Federal Acquisition Regulation (FAR). Authority is based on training, experience, and demonstrated capability in the contracting profession and knowledge of federal acquisition laws and regulations. Contracting Officers are given significant authority and responsibility as the

Government's agents. Contracting Officers are in charge of negotiation, sign official correspondence to the contractor, and may issue unilateral changes pursuant to the contracts Changes clause. They may unilaterally stop work or terminate the contract and they may make official final decisions on any disputes with the contractor. Of course, the contractor may appeal a Contracting Officer's final decision to the Board of Appeals or the United States (US) Claims Court; so Contracting Officers will be cautious and get legal help with contentious issues.

Contracting Officers are much like Program Managers in that they must manage the activities of others to get their job done. Coordination of the work with others consumes much of the Contracting Officer's time. Eighty to ninety percent of the calendar time to "get on contract" is often time for other functions not under the direct control of the Contracting Officer. This makes leadership a delicate balancing act for the Contracting Officer; they must balance the desire for fast action with the old proverb that "if you want it bad, you get it bad". Rushing auditors, legal reviews, pricing personnel or technical evaluators could result in a bad deal for the government. Failure to adequately review or prepare proposed contract wording could be very costly down the road.

Success requires a team effort. Because of their unique vantage point as the government's agents for dealing with contractors, Contracting Officers may have an excellent overall understanding of the program. Their perspective of the contractor's requirements and government's desires makes them a potentially valuable resource to Program Managers. Program Managers who understand, cultivate, and tap this resource as advisors/confidants can improve overall teamwork and efficiency of the program. A mutual understanding of the Contracting Officer's responsibilities and functions and the Program Manager's responsibilities and functions is one key to developing productive relationships. Cultivating a team relationship based on understanding and cooperation between all program management personnel (including the contracting specialists) can improve how effectively we all go about our Agencies acquisition business. With your help, we can ensure delivery of quality supplies, equipment and services in a timely manner.

## **II. DEFINITION OF TERMS**

**Commercial Products/Services** -- Products/services customarily sold in the commercial marketplace and to the general public.

**Competitive Proposals** -- Contracting process where proposals are solicited through various means and negotiations are conducted with all offers with a reasonable expectation of obtaining the contract.

**Market Research** -- Researching the commercial market marketplace to determine availability of commercial or non developmental products/services; customary practices regarding customizing, modifying or tailoring commercial items to meet Agency's performance needs and associated costs; customary practices including standard delivery times, warranties, quality control, etc., which commercial sales of products/services are made; if subcontractor's are used and to what extent; and, business size and status (i.e. small or small disadvantaged business, woman-owned, etc.) of potential sources. Caution must be exercised so fact finding (market research) doesn't inadvertently become an "Organizational Conflict of Interest.

**Non developmental Product/s/Services** -- Products/services sold in the commercial marketplace to the general public that, if modified to a reasonable extent, could meet the Agency's performance needs.

**Organizational Conflict of Interest** -- Because of other activities or relationships with other persons, a person is unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

**Performance-Based Contracts** -- All aspects of the contract are structured around the “purpose” of the work to be performed (what is to be done) as opposed to either the “manner” by which the work is to performed (telling the Contractor how to do the work) or broad imprecise work statements.

**Performance Work Statements** -- A work statement which placed emphasis on performance. Performance work statements define the service requirement in terms of measurable objectives. The Government states “what” needs to be accomplished, but does not tell the Contractor “how” to do the job. The performance approach is preferred over the “how to” process because it (1) it shifts the risk for satisfactory performance from the Government to the Contractor, (2) it has increased potential for competition, (3) increases the likelihood of receiving more innovative and efficient methods of performance, and (4), reduces cost.

**Procurement Official** -- Any officer or employee of an agency who has participated personally and substantially in drafting, or reviewing and approving a specification or statement of work; preparation or development of a procurement or purchase request; preparation or development of

a procurement solicitation; evaluation of bids or proposals or selection of sources; negotiations to establish the price or terms and conditions of a contract or contract modification; and review and approval of the award or modification of a contract.

**Purchase Description** -- A brief description of the essential physical and functional characteristics of the materials or services required to meet program needs. Specifications and Work Statements contain complete information.

**Sealed Bids** -- Contracting process where the entire process is conducted at arms length and discussions (negotiation) are not permitted.

**Small Business** -- A company whose size is small compared to other companies in the same industry. Comparison is based on the number of employees for supply and equipment contracts and on the 3 year average annual receipts for service contracts.

**Small Disadvantaged Business** -- A business concern that is at least 51% owned by one or more individuals who are socially and economically disadvantaged, such as: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans.

**Specifications** -- Specifications describe products, not the work necessary to produce them.

**Work Statements** -- Synonymous with "Statement of Work". Pertains to service contracts. Used to work to be done. See Performance work Statements.

### **III. RESPONSIBILITIES/AUTHORITIES**

#### **A. The Marketing & Regulatory Programs (MRP-MBS) Contracting Team**

The MRP-MBS Contracting Team processes all acquisitions for supplies, equipment, and services . . . .

- When the value is estimated to exceed the Simplified acquisition Threshold of \$100,000 annually;
- When not available through required sources of supply, such as the General Services Administration, Federal Supply Schedule contracts, acquisitions from nonprofit agencies employing people who are blind or severely disabled, etc. Refer to Part 8 of the Federal Acquisition Regulations (FAR) for a complete listing on required sources of supplies and services.

The names, telephone numbers, and signature authorities of members of the Contracting Team is located in **Exhibit 1** (in the back of this handout).

#### **B. Acquisition Thresholds**

- \$1.00 - \$2,500 -- Micro-Purchase. Competition is not required if the Contracting Officer considers the price fair and reasonable. To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.
- \$2,500 -- \$25,000 -- Simplified Acquisitions Procedures (Small Purchases). Competition is required to the maximum extent practicable to ensure that the purchase is advantageous to Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality).
- \$25,000 -- \$100,000 -- Simplified Acquisition Procedures. A synopsis of the acquisition must be published in the Commerce Business Daily (CBD) to improve small business access to information and enhance competition by identifying contracting and subcontracting opportunities.

#### **C. Federal Acquisition Streamlining Act**

The Federal Acquisition Streamlining Act (FASA) of 1994, Public Law 103-355, was signed into law on October 13, 1994. The goals of FASA are to reduce the time and cost to the Government to buy products and services, reduce the purchase cost of those products and services and assure that the Government procures the best technology/method to meet its need.

- FASA refined the "Small Purchases" process as the "Simplified Acquisition" process which increased the dollar threshold for simplified acquisitions from \$25,000 to \$100,000;
- FASA requires Agency's increase the number contract actions awarded to small businesses owned and controlled by disadvantaged persons and women-owned small businesses;

- FASA encourages the acquisition of commercial items and Special requirements were established for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial marketplace. Market research is required for each acquisition of supplies, equipment, or services to determine whether commercial items are available that could meet the requirements of the agency. If commercial items are not available that meet the requirements of the Agency, consideration shall be given to the availability of non developmental items that could meet the Agency's requirements; could be modified to meet the Agency's requirement; or, could meet the Agency's requirement if those requirements were modified to a reasonable extent.
- FASA places greater emphasis on Contractor's past performance in the evaluation for award;

#### **D. Contracting Officers' Authority**

Contracting Officers' actions are governed by various regulations and policies including the Federal Acquisition Regulations (FAR), Agriculture Acquisition Regulations (AGAR) and Advisory's, Departmental Directives 5000 Series, Agency Directives 200 Series, and General Accounting/Comptroller General decisions.

Contracting Officers are issued Certificates of Appointment as Contracting officers (warrants) which set limits on their authority. These warrants are based on education, experience and training as set forth in Departmental Directive 50011. The warrants give the Contracting Officer responsibility to:

- ensure contracts are authorized by law;
- ensure contracts are legally and technically sufficient;
- execute and administer performance of contracts;
- personally sign all contracts and modifications; and
- safeguard the Government's interest in connection with contracts.

Procurement, whether it requires a formal contract or a purchase order, involves **teamwork** on the part of all parties. Advanced coordination and planning between the requisitioner and procurement personnel will eliminate many of the common problems and result in a more timely and effective procurement action.

**Teamwork is required as soon as the need is identified**, before the requisition is prepared and submitted to the Contracting Team, and the need for teamwork continues through the acquisition process and the performance of the contract. It ends when the contract is complete and final payment has been made.

#### IV. ACQUISITION PLANNING (PROGRAM TASK/RESPONSIBILITIES)

##### A. Lead Time

As each need arises, it is important to consider the various units of time that are required for processing:

1. **Administrative Lead Time** -- This is the time required to modify the AAP, write or update specifications/work statements, conduct market research, develop independent Government estimate, write needed justifications and/or obtain any necessary approvals.
2. **Procurement Lead Time** -- This the time required to complete the contract action upon receipt of the “ready” requisition by the Contracting Team. A “ready requisition” is a requisition complete with a specification/work statement, required justifications, and funding.

The following are some of the possible actions that must be taken and for which time must be provided when planning an acquisition:

- a. Review of the solicitation package by the Program (10 days)
- b. Request and receive wage rate information from the Department of Labor (Service Contracts) (**60 days**)
- d. Pre-solicitation Legal review of Solicitation by Office of the General Counsel, when necessary (15 days)
- e. Procurement Market Research
- f. Office of Small Disadvantaged Business Clearance
- g. Synopsis in Commerce Business Daily (21 days)
- h. solicitation issued and available for review (30 days)
- i. Technical/price evaluation
- j. Audit or cost/pricing data
- k. Negotiations
- l. Responsibility determinations
- m. Prewar Legal Review

The average processing time to award a contract is **80 calendar days** for contracts awarded using the “Sealed Bid” method of Contracting and **120 calendar days** using the “Negotiated” method. Contracting methods and types of contracts is discussed later in this Handbook. The method/type contract chosen depends on your program needs and market conditions. Attached as **Exhibit 2** is an example of the Individual Acquisition Plan prepared by the Contracting Officer and sent to you **within 5 working days** after receipt of a requisition. This plan is the Contract Specialists best estimate of the time it will take to plan, structure, negotiate and award a contract.



**3. Production Lead Time** -- Production lead time is probably the most overlooked aspect of procurement planning. This is the time needed by the Contractor, upon receipt of the award, to schedule, manufacture and deliver the items required by the contract.

It is important that requisitions are submitted early for recurring supply and service contracts. They are not renewed automatically. A break in service or contractual coverage could result if the Contracting Team receives a requisition without adequate lead time or does not receive one at all. A break in service can be avoided if you know when the contract expires and submit your renewal request at least 4 months prior to the expiration of the effective period of the contract (or renewal option period) .

**B. Advanced Acquisition Plan**

The teamwork begins with the Advanced Acquisition Plan (AAP) which is required by Departmental Regulation 5007-1. This is the overall plan of procurement activities anticipated during the fiscal year. This is not the same as the “individual plan” which is tailored to a specific need. The AAP should coincide with your budget and is designed to act as a management tool:

- to ensure efficient and economical acquisitions, to meet essential and priority requirements, to meet mandated budget restrictions,
- to consolidate acquisition requirements to reduce workload and provide price breaks-or quantity buying,
- to schedule procurement workloads and manage personnel,
- to meet reporting requirements for controlled acquisitions, and to reduce wasteful practices resulting from hurried or unnecessary year-end acquisitions.

The plan must be developed prior to the beginning of the fiscal year and must include all projected major acquisitions, such as:

- individual acquisitions expected to exceed \$25,000,
- delivery orders which exceed \$100,000,
- all ADP and word processing related acquisitions in excess of \$25,000, including orders against existing contracts,
- all "high waste vulnerability purchases expected to exceed \$10,000, such as consulting services, audio visual products and services, furniture, office equipment and noncompetitive acquisitions.

A tracking system is used to verify that a Procurement Request is included on the AAP and has all necessary approvals. The Contracting Section can not award a contract unless the supply or service is on the AAP. Additional information regarding the submission and modification of the AAP may be found in The Acquisition Handbook. Each Agency Program or Division is required to establish its own unique tracking code ending with four digits, 0001 through 9999, numbered consecutively. The code number must be included on the AD-700 - Procurement Request - directly above Block 1, Requesting Office.

Tracking codes shall be formulated as indicated by the following example:

AGENCY/PROGRAM	DIVISION	CODE
Plant Protection and Quarantine (PPQ)	Western Region (WR)	1 (0001)

The tracking code for this example is PPQ-WR-0001.

### **C. Market Research**

Market research is a mandatory part of the acquisition process since the enactment of FASA for all acquisitions that "may" exceed the "simplified acquisition threshold" (Federal Acquisition Regulation (FAR), Part 10). Contracting Officer's are required to; (1) Ensure that legitimate needs are identified and tradeoffs evaluated to acquire items to meet those needs; (2) Conduct market research appropriate to the circumstances; and, (3) Use the results of market research to.

- Determine if sources exist to satisfy the requirement;
- Determine if "commercial items" or "non developmental items" are available to meet the agency's requirement, could be modified to meet the agency's requirement, or could meet the agency's requirements if those requirements were modified to a reasonable extent;
- Determine the extent to which commercial items or non developmental items could be incorporated at the component level;
- Determine the practices of firms engaged in producing, distributing, and supporting commercial items, such as warranties, delivery time, buyer financing, maintenance, packaging and marking, etc.;
- Ensure maximum use of recovered materials (Refer to FAR Subpart 23.4) and promote energy conservation and efficiency.

However, market research must not request potential sources to provide more than the minimum information necessary to gain a knowledge of industry and market practices. Providing specific information about the agency's requirement to any one company may create an unfair competitive advantage (or the perception of favoritism) to the company receiving the information.

Information about upcoming acquisitions must be disseminated equally to all potential offeror's and provide an equal opportunity to compete for the contract. The dissemination of information is the responsibility of the Contract Specialist or Purchasing Agent. There is a fine line between "market research" and "organizational conflict of interest".

#### **D. Organizational Conflict of Interest**

There is a fine line between "market research" and "organizational conflict of interest". Whereas market research is necessary to determine availability of commercial or non developmental products/services in the marketplace, it is limited to "fact finding". That is, determining customary practices of the market with regard to customizing, modifying or tailoring commercial items to meet performance needs and associated costs; determining customary practices for delivery terms, warranties, quality control, etc.; if subcontractor's are used and to what extent; and the business size and status (i.e. small or small disadvantaged business, woman-owned, etc.) of potential sources. However, you cross the line when you provide specific information about the Agency's requirement to a potential Contractor. This is an "Organization Conflict of Interest". An "organizational conflict of interest" creates an unfair competitive advantage for a company and could lead to protest by other interested contractor's and delay award. Limit your contacts to fact finding (market research) of existing market conditions and industry standards.

#### **E. Procurement Integrity**

Section 27 of the Office of Federal Procurement Policy Act - Procurement Integrity - went into effect on December 1, 1990. The Act prohibits certain activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement.

As a procurement official, it is your responsibility to:

- Review the Procurement Integrity summary for procurement officials.  
A copy of the summary is attached as **Exhibit 3**.
- Sign and date the certificate - Optional Form 333.
- Detach the signed certificate and return it to your supervisor.
- Retain a copy of the certification for your records.

The original certification document will be placed in your Official Personnel folder.

## **F. Specifications/Work Statement**

Specifications refer to a product (i.e. supplies, equipment) whereas the work statement (statement of work) refers to a service. A full and complete description of the equipment, supplies and/or services is the number one priority to ensure that you receive the product or service you require. Unduly restrictive, vague, or generalized specifications discourage effective competition and may lead to protests and unnecessary program delay.

The specification/work statement must contain (1) a clear, accurate description of the Government's minimum needs; (2) inspection and testing provisions; if any, (3) special packaging, marking and shipping instructions; (4) any special requirements or conditions and, (5) evaluation factors for award.

Remember, it is necessary to tailor every specification/work statement to particular requirements and circumstances. At a minimum, the following information is required:

Background (Introduction) -- The background should include (1) a general description of the requirement, (2) a brief discussion of why the particular product is being pursued, how it will be used, and how it will relate to previous, ongoing or future program objectives, and (3) if applicable, discuss any known difficulties or constraints, and any techniques or methodologies that have been tried and were found ineffective.

Scope of Work (Objective) -- In the Scope of Work, the big picture is presented in concise form. Broad, non technical terms should be used. The actions to be performed by the Contractor and the results or products expected are summarized.

References -- All applicable documents referred elsewhere in the specification or work statement should be listed in this section by document number and title. Do not use unnecessary references. References can contribute to or hinder clarity depending on how they are incorporated. If reference material is brief, consider including it verbatim in the specification/work statement in addition to giving the reference. If it is lengthy, carefully review the data for relevancy and for material which may be contradictory to instructions contained elsewhere in the specification/work statement. NOTE: Merely listing the documents does not establish a contractual obligation to adhere to any of the provisions contained in them. You must state any such obligation in the Requirements section or in a separate part of the specification/work statement

Requirements -- Just as the specifications or work statement is the heart of the contract, so the Requirements section is the heart of the specification/work statement. The prospective Contractor has to be told in this section what is needed, as precisely, clearly, and completely as possible.

In addition, for many projects, the task, end result/deliverable, and schedule requirements are closely integrated and it is most logical to discuss them together in one section. For

other projects, however, it may be best to discuss specific tasks and end results as one section and to set forth deliverables and due dates for the delivery as a separate section.

Attachments -- List all attachments to be included in the Solicitation and subsequent contract.

Progress/Compliance -- An important question is whether you will be able to determine compliance for a particular requirement. If you don't think the requirement lends itself to verification of compliance, examine the requirement closely to see if it is really valid. In specifications for products, compliance is readily determined by means of quality assurance provisions. You can ask the Contractor to submit a first article sample for examination and testing if you desire, before authorizing to proceed with production.

Evaluation Factors for Award -- The evaluation factors must complement the specification or work statement. They must provide a means of discriminating among proposals. Evaluation factors, include technical, price/cost and business factors. Contractor past performance is now included as an evaluation factor in all negotiated procurements valued at \$100,000 or more. The Project Manager and Contracting Officer must decide whether to recommend award on the basis of **“Lowest-Price Technically Acceptable Proposal”** or **“Best Value”**.

A “Lowest-Price Technically Acceptable Proposal” is a proposal which offers the best price to the Government after minimum technical requirements have been met. All factors are evaluated using the “go/no go” decision rule.

“Best Value” is the concept that allows award to the offeror providing the greatest value to the Government in terms of tradeoff between price/cost and technical merit. One or more of the evaluation factor are evaluated using multiple distinctions of merit. Award does not have to be made to the lowest price offer.

#### **G. Performance Work Statements**

Basically, there are two ways to approach the description of a service. The Contractor can be told “how to perform” the service or the Contractor can be told “what objectives are to be met” in the performance of the services. The preferred approach is tell the Contractor “what is required” (performance objectives) in a performance work statement (PWS). This allows the Contractor to decide how the objectives are to be met, thus assuming the risk of performance.

The PWS must provide the Contractor with answers to four basic questions:

- What needs to be done?
- When (and sometimes where) should it be done?
- What should the final output be?
- How will the final output be inspected/accepted?

Each task (performance output) identified in the PWS should also include a performance standard and method of surveillance. To specify a performance standard, there must be a performance indicator for the service. A performance indicator is a feature of an output that can be **measured**, quantitatively or qualitatively.

Example: A performance analysis for a taxi operation may look like this:

**ACTIVITY: Taxi Operation**

<b>Performance Indicator</b>	<b>Standard</b>	<b>Maximum Error Rate</b>
<b>Response Time</b>	<b>4 Minutes</b>	<b>10%</b>
<b>Accidents Per Mile</b>	<b>0</b>	<b>0%</b>
<b>Operational Cost Per Mile</b>	<b>0.14</b>	<b>20%</b>
<b>Taxi In-Commission</b>	<b>90%</b>	<b>10%</b>

In the above example, the pickup time is a quantitative performance indicator for taxi service. Selection of performance indicators is a prerequisite for determining standards and maximum error rates (MER) for a given output.

For any given service there may be several performance indicators. When writing the PWS, you must determine which one(s) best determine(s) the acceptability of the service. At least one performance indicator must be selected for each separate output. In determining performance indicators, you must identify **what** elements of the service will provide a **measure** of output quality.

When objectives are not well described and defined, misunderstandings are inevitable between buyers and performers, despite good intentions of both parties. Ambiguous descriptions can lead to unsatisfactory performance, delays, litigation and higher costs.

Contact the MRP-MBS Contracting Team as soon as you identify a service requirement. A Contract Specialist can provide you information to facilitate writing a PWS to meet your specific needs.

## **H.     The Requisition (AD-700 Purchase Request)**

The completeness of the requisition submitted for a requirement has a great deal to do with the time involved in preparing the solicitation for issuance. Procurement Acquisition Lead Time (PALT) does not begin until a properly executed requisition (ready requisition) is received by the Contracting or Purchasing Teams.

The requisition must, as a minimum, provide the following information:

- Appropriate funding,
- Full description of the requirement,
- Realistic delivery requirements,
- Information on all Government-furnished property, materials, etc.,
- Supporting documentation, including all required justifications, clearances and approvals.
- Information pertaining to the distribution of the contract after award.

A more complete guideline for the preparation of a requisition is included herein as **Exhibit 4**. A checklist for determining the adequacy of the information you are providing is provided in **Exhibit 5**.

## **I.     Funding**

Funding is a key element in every acquisition; without compensation, a contract can not be enforced. Program Managers **commit funds** for a procurement by submitting an AD-700, Purchase Request (PR), to the contracting Team as needs are identified. The signature at the bottom of the PR is a **certification** that funds **are available** to cover the proposed contract. Therefore, the signature shall be from either the Program Manager or an employee authorized to commit program funds. A Government liability results from the award of a contract, issuance of a purchase order, or similar action by a properly appointed Contracting Officer. Therefore, funds are **obligated** at time of award.

## **V. CONTRACTING PROCESS (MRP-MBS TASKS)**

### **A. Individual Acquisition Plan**

The Contract Specialist assigned to process your programs requirement will acknowledge receipt of your requisition and develop an “individual acquisition plan” tailored specifically to your requirement **within 5 working days** from receipt of your “ready requisition”. The plan will project anticipated activities/milestones unique to your requirement, but necessary to legally establish a contract. A sample of an individual acquisition plan is shown in **Exhibit 2**.

### **B. Procurement Preference Goals**

Contracting Officers have a responsibility under the regulations to support the Government’s socioeconomic policies, such as:

8(a) Set Asides - Section 8(a) of the Small Business Act established a program that authorizes the SBA to enter into contracts with other Federal agencies and subcontract to small SBA certified disadvantaged businesses.

Small Business Set Asides - It is the policy of the Federal Government to place a fair proportion of its acquisitions with small and small disadvantaged business concerns. The Small Business Administration (SBA) counsels small businesses and assists contracting personnel to ensure that a fair proportion of Government contracts are awarded to small and small disadvantaged businesses.

Woman-Owned Businesses -- The Federal Acquisition Streamlining Act of 1994 requires Agencies to award 5 percent of their procurement dollars to woman-owned business concerns.

The Contracting officer will determine, prior to beginning the contracting process, the appropriate contract method and if your requirement can be satisfied through one of these preference programs. Bidder’s list’s on procurement actions estimated at \$100,000 or more must be reviewed and approved by the Agency and Department Office of Small Disadvantaged Business Coordinator’s to ensure proper consideration of socioeconomic policies and progress in satisfying USDA and Agencies of Marketing and Regulatory Programs (MRP) procurement goals.

### **C. Advertising**

Each proposed open market acquisition which exceeds \$25,000 must be publicized in a Department of Commerce publication entitled The Commerce Business Daily. Companies who are interested in supplying the Government's needs subscribe to this daily publication and can request copies of solicitations for products or services from the contact listed in the entry.



Proposed acquisitions are publicized in an effort to increase competition, broaden industry participation in meeting the Government's needs, and assist small businesses, small disadvantaged businesses, and woman-owned business in obtaining contracts and subcontracts with the Federal Government.

#### **D. Contracting Methods**

In Government contracting, there are two methods of soliciting a contract -sealed bid and negotiation. Attached as **Exhibit 6** is a flow chart showing the processes for each method.

##### **1 . Sealed Bid**

A sealed bid employs competitive bids which are publicly opened. All qualified sources are allowed to bid on an equal basis and award is made based on price. In order to use sealed bidding, the following conditions must exist:

- Time permits the solicitation, submission, and evaluation of sealed bids,
- Award will be based on price and other price-related factors,
- It will not be necessary to conduct discussions with the offerors regarding their bids, and
- There is a reasonable expectation of receiving more than one offer.

Sealed bidding involves five steps:

- a.** Pre solicitation phase - Encompasses planning, requisitioning, market research, determination of contract type/method and set asides, preparation of the solicitation, and publicizing the requirement in the Commerce Business Daily;
- b.** Solicitation phase - Encompasses issuance of the solicitation, receipt of bids, inquiries from prospective bidders, and public opening;
- c.** Evaluation of bids phase - Encompasses price evaluation and determination of responsiveness and responsibility;
- d.** Award of the contract; and
- e.** Administration of the contract.

Bids received are required to be held in a secured area such as a locked cabinet until opened. A bid may be modified or withdrawn "only" until the date and hour set for opening. Any interested party may attend the bid opening and no changes can be made to the terms and conditions of the solicitation nor to the bid price once an opening has occurred. Bids received after the date and time set for opening cannot be considered and must be returned to the offeror unopened.

The award of a sealed bid contract is usually to the lowest bidder. There are two reasons that would allow the lowest bidder to be passed over; responsiveness and responsibility.

A bidder who is “non responsive” has in some way attempted to change the terms and conditions set forth in the solicitation, a practice that is not allowed in sealed bidding. A bidder who is non responsible is one who, for reasons of inadequate resources, is unable to perform, has unsatisfactory performance record, or lacks of financial capability.

## **2. Negotiation**

Negotiated procurements are more flexible than sealed bidding because it allows an opportunity for discussion and modification of the terms and conditions upon mutual agreement. In a negotiated procurement, factors other than price can be the basis for award. The Government “does not” have to award a contract to the “low bidder”! However, the basis for evaluation must be set up in advance and communicated to the bidders so all interested parties are clear on the factors that will be used to select a contractor.

There are also five phases in a negotiated procurement:

- a.** Pre solicitation phase - Encompasses the same functions as that in sealed bidding;
- b.** Solicitation phase - Encompasses issuing of the solicitation, inquiries from prospective offerors, receipt of proposals but with **no public opening**;
- c.** Evaluation and negotiation phase - Encompasses technical evaluation, cost analysis, establishing competitive range, negotiations, and an opportunity for offerors in the competitive range to submit “final revised proposals”;
- d.** Selection and award phase - Encompasses the final determination of which proposal best meets the Government's needs based on the technical proposal, cost data, and the company's capabilities;
- e.** Contract administration.

Pre solicitation conferences and/or discussions can be held to gather information regarding the industry and/or the capabilities of potential contractors prior to the development of the solicitation to ensure that what we are requesting is reasonable within the industry.

On complex negotiated procurements, offerors are required to prepare a technical proposal and a cost proposal. The technical proposal is then evaluated by a panel of technical experts and rated based on a predetermined evaluation criteria. A factor is then added based on the prices offered and a "competitive range, is established. Those offerors who are in the competitive range are the ones with whom discussions will be held to clarify their proposals, point out areas where their proposals are weak, and give them an opportunity to change their proposals.

The information in both the technical and cost proposals is confidential information which cannot be revealed until award of the contract is made. Only those program individuals involved in the technical evaluations will have knowledge of the proposals and they sign an agreement prior to their evaluation not to reveal any of the information.

Once all discussions are completed, the Contracting Officer calls for "final revised proposals". The offeror can then submit his final proposal based on the changes made to the technical and business proposal as a result of the discussions. At that point, no further discussion is allowed and a selection is made based on the evaluation criteria in the solicitation.

## **E. Contract Types**

There are many different types of contracts available for use to meet the Government's requirements. A few of the more commonly used ones are explained below:

### **1. Firm Fixed Price**

A firm fixed price contract can result from either a sealed bid or negotiated solicitation. With a firm fixed price contract, the contractor assumes 100% of the risk for costs and performance. The contractor agrees to provide a specific amount of supplies or services for a price -- there are no adjustments.

### **2. Cost Reimbursement**

A cost reimbursement contract can result only from a negotiated solicitation. The contractor submits a proposal for accomplishment of the task with information on estimated costs and a fee (or profit) for which they will do the work. As the contract continues, the Government reimburses the contractor for any and all costs associated with the accomplishment of the task and the agreed upon fee.

### **3. Indefinite Delivery Contracts**

An indefinite delivery contract is generally a fixed price contract and can be any one of the following three types:

Definite quantity -- Provides for delivery of a definite quantity of specific supplies or services for a fixed period with deliveries to locations designated on individual orders against the contract.

Indefinite quantity -- Provides for an indefinite quantity, within stated limits, of specific supplies or services to be furnished during a fixed period, with deliveries to locations designated on individual orders against the contract.

Requirements -- Provides for filling all actual purchase requirements of designated Government activities for specific supplies or services during a specified contract period, with deliveries to locations designated on individual orders against the contract.

#### **4. Multi-Year Contracting**

Contracts for a continuing service and/or for supplies that are needed on a regular basis can be set to cross fiscal years if it is in the best interest of the Government. However, because we do not have authority to commit the Government to purchases for which money has not been obligated, these contracts must carry a clause indicating that the contract is null and void if Congress does not appropriate money for the program.

Most of the contracts are set up for 1 year with multi-year options which allows us more flexibility in renewing or not renewing the contract. In the case of contracts with option years, there is usually some kind of cap on increases that will be allowed during the option years.

#### **F. Service Contracts**

##### **(i) Performance-Based Contracts**

In FY98, the use of “performance-based contracts” became a “hot” issue with the Office of Federal Procurement Policy (OFPP) and the Office of Management and Budget (OMB), and it is still a “hot” issue today. As a result, OFPP and OMB required the Department to expand the use of PBC within USDA.

What is PBC and how will it effect my program?

Performance-based contracting (PBC) is a cost saving method of contracting. It’s primarily intended for services, but the practice is encouraged for supply and equipment acquisitions as well. PBC emphasizes that all aspects of an acquisition be structured around the “purpose” of the work to be performed as opposed to the “manner” in which the work is to be performed. It is designed to ensure that Contractors are given “freedom to determine how” to meet the Government’s performance objectives, that appropriate performance quality levels are achieved, and that payment is only made for services which meet these levels. It emphasizes objective, measurable performance requirements and quality standards in developing statements of work, selecting Contractors, determining contract type and incentives, and performing contract administration. Before PBC, design or detailed specifications were used to tell potential Contractor’s “how” to perform a service.

An example of janitorial contract may have read...

Damp mop vinyl floors daily. Scrub all floors using a commercial grade floor cleaner, apply two coats of finish, and buff monthly.

You get the idea....The Contractor was told “how” to do the job. Why do you care how the janitor cleans the floor as long as the floor is kept clean and shiny?

An example of a PBC for janitorial service might now read...

Floors shall be clean and shiny.

As the Contracting Team receives requests for services, Contract Specialists will be reviewing work statements to see if they have been or can be written for performance-based” contracts.

Success in reaching Department wide goals is a team effort! Contact the MRP-MBS Contracting Team early in the process. They will provide you with information and advice to facilitate writing a PWS to meet your program needs.

## **(ii) Advisory and Assistance Service Contracts**

Advisory and assistance services are those services to support or improve agency policy development, decision-making, management, and administration, or to support of improve the operation of management systems. Advisory and assistance services may take the form of information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance.

These types of services consist of--

- Individual experts and consultants;
- Studies, analyses, and evaluations;
- Management and professional support services; and
- Engineering and technical services.

Special reporting requirements for the award of advisory and assistance service contracts was established by Congress under the Rural Development , Agriculture, and Related Agencies Appropriations Act of 1990. The Act requires that no later than 20 days after the end of each fiscal year, the Secretary of Agriculture shall submit a report to Congress on the amounts obligated and expended by the Department during the fiscal year for the procurement of advisory and assistance services with a copy of the report to the Comptroller General.

It is the policy of the Department of Agriculture that agencies acquiring advisory and assistance services shall comply with Federal Acquisition Regulation (FAR) 37.2 and Department

Regulation 5037-1. Requisitioning offices must submit a justification with their, AD-700, Purchase Request to MRP-MBS. **Exhibit 7** contains the information that is to be included in the justification for all proposed contracts for advisory and assistance services (CAAS). CAAS estimated at \$25,000 or above must also be included on a “summary of planned actions”. Refer to **Exhibit 8**. Submit the summary of planned actions with your justification to MRP-RWBS - Riverdale, Washington, Administrative Services Enhancement Unit (ASEU) as follows:

- 1st Qtr by 8/17
- 2nd Qtr by 11/16
- 3rd by 2/17
- 4th Qtr by 5/17

If you have a need to procure a service that might fall under the definition of advisory and assistance, call the MRP-MBS Contracting Team for assistance. Involving a Contract Specialist early in the process will save you time, eliminate unnecessary paperwork, and ensure award of a legally sufficient contract.

### **(iii) Inherently Governmental Function**

Agencies are “prohibited” from contracting out inherently Government functions. An “inherently Governmental function” is defined as a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a Office of Federal Procurement Policy (OFPP) determination, not a legal determination. An inherently Government function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government.

An inherently Governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to---Bind the United States to take or not take some action by contract, policy, regulation, or other things. Governmental functions normally fall into two categories: the act of governing, i.e., discretionary exercise of Government authority, and monetary transactions and entitlements.

The MRP-MBS Contracting Team is available to help you determine if a particular service is an “inherently Governmental function” and explore options to legally satisfy your service needs.

**(iv) Personal Service Contracts**

A personal service contract is a contract that, by its express terms or as administered, makes the Contractor personnel appear, in effect, Government employees. They are characterized by the employer-employee relationship it creates between the Government and the Contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required under civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract. Therefore, Agencies **are prohibited** from entering into personal service contracts unless specifically **authorized by statute** to do so.

## **VI. CONTRACT ADMINISTRATION**

Our job isn't finished when the contract is awarded. It has just begun! It's isn't finished until the service is completed or the supplies are delivered and final payment is made. Award of a Government contract begins a lengthy and sometimes difficult administrative process intended to secure for the Government the benefit for which the contract was awarded. Achieving this objective involves a total management process; throughout the life of a contract. Information must be collected, organized, communicated, and evaluated as a base for decision making and enforcing the terms of the contract.

The possible areas of you could be involved in are:

### **A. Inspection and Acceptance**

When equipment, supplies or services are delivered to the final destination, it is imperative that they are promptly inspected for compliance to the specifications and that no damage has occurred in shipment. The acceptance and payment of the contract without adequate inspection could result in no recourse if later the items are found to be defective or damaged. A delay in acceptance could result in interest penalty charged to your programs funds for late payment if proper steps are not taken.

Acceptance is automatically assumed 7 days after receipt unless the contract calls for a longer acceptance period. If contact is not made with the Contractor within the established acceptance period regarding unsatisfactory supplies or services, the payment due date will be based on the date the items were received or the date the invoice was received, whichever is later, no matter how long the resolution of the discrepancy takes. **ALERT THE CONTRACTING OFFICER IMMEDIATELY WHEN THIS OCCURS.**

### **B. Contract Delivery Receipt**

As soon as partial or complete delivery of supplies or services have been received and inspected for compliance with contract requirements, project officers, administrative support personnel, Contracting Officer's Representative's (COR), etc. must promptly fill out and submit a receipt form to authorize payment. However, when problems occur (i.e. nonconforming supplies, damaged goods, etc.), notify the Contracting Officer for assistance.

Except for requirements contracts which are paid through delivery orders by the National Finance Center (Refer to the Purchasing Section Handout), contract payments for APHIS are paid by the MRP-MBS Payments Team based on the Contract Delivery Receipt, APHIS Form 329, a copy of which is attached as **Exhibit 9**. Contract payments for AMS and GIPSA are paid by MRP-RWBS, Budget and Accounting Division. Use the "Remarks" to explain problems reported to the Contracting Officer.



Send the white copy to MRP-MBS Payments Team or MRP-RWBS. The canary copy is to be mailed to the Contracting Officer. Retain the pink copy for your records. The goldenrod copy should be completed (with model number, serial number, etc.) and forwarded to the Property Team when equipment is received so it may be added to your property inventory.

### C. Contracting Officer's Representative

The term “Contracting Officer” not only means the person executing the contract on behalf of the Government, but includes, except as otherwise provided in the contract, the authorized representatives of the Contracting Officer acting within the limits of their authority. As a representative or agent of the Contracting Officer, the COR is directly responsible to the Contracting Officer for the administration of the contract within the authorities and limitations prescribed in the letter of designation (delegation of authority) issued by the Contracting Officer.

The Contracting Officer’s Representative (COR) serves as technical advisor to the Contracting Officer mainly on service contracts. Through physical observation, the COR ensures that work under the contract is performed in exact compliance with the terms and conditions of the contractual agreement. It is the COR who makes many of the decisions or recommendations incident to the day-to-day administration of a contracted project, and the Contracting Officer relies heavily on the judgment exercised by the COR. This reliance is founded on the fact that the COR is experienced with the type of work being contracted for and also possesses the technical background to evaluate performance.

Contracting Officer is the final decision on disputes with the contractor and the only person with authority to amend or modify contract terms and conditions. **The COR has no authority to change any of the terms and conditions of the contract.** This includes, but is not limited to, extending agreed to delivery or performance dates. He/she can not "fire" the contractor but must work through the Contracting Officer to take any necessary action.

The COR has specific responsibilities in connection with that contract as follows:

#### 1. **Responsibilities**

The COR must:

- become intimately familiar with the terms and conditions of the contract in order to effectively monitor the contractor's performance, inspect all materials and equipment to be used in the performance of the contract and all work performed,
- meet with the contractor on a regular basis to clarify any inconsistencies and resolve any problems,
- record all conversations with the contractor and any other information necessary to resolve any dispute that may occur, and
- report any problems to the Contracting Officer as they occur.

## VII. EXHIBITS

### Exhibit 1: MRP-MBS CONTRACTING TEAM--SIGNATURE AUTHORITIES, E-MAIL ADDRESSES, AND TELEPHONE NUMBERS

#### Name and Title

#### Contracting Officer Signature Authority

Gloria J. Benson

Procurement Technician

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**Exhibit 2: Individual Acquisition Plan**

Solicitation No.:

Requisition No.:

Supply/Service:

Date Received:

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The following activities are anticipated to successfully complete this acquisition. I propose the following time frames for each activity, and the resulting milestones , to govern the s acquisition.

<b>Activity/Milestone</b>	<b>Time Period/Date</b>
Specifications/Statement of Work reviewed and approved by Program and Procurement team members	xx days
Market Research	xx days
Office of Small Disadvantage Business Utilization (OSDBU) Clearance	xx days
Synopsis in Commerce Business Daily	xx days
Develop Solicitation	xx days
RFP -- \$500,000 Justification for Other than Full and Open Competition Approval by Agency Competition Advocate	xx days
RFP -- \$500,000 Source Selection Procedure Approved by Head of the Contracting Activity	xx days
Request and receive wage rate information from Dept. of Labor	xx days
Solicitation reviewed and approved by Program and Procurement team members	xx days
RFP -- \$500,000 OGC Legal Review of Solicitation	30 days
Release Solicitation	MM/DD/YY
Solicitation on-the-street	30 days
Bids/Offer due	MM/DD/YY
Technical/Price evaluation	xx days
Audit Of cost/pricing data, if required	60 days
Negotiations with vendors	xx days
Request Final Proposal Revision	MM/DD/YY
Final Technical/Price evaluation	xx days
RFP - \$500,000 Award recommendation to HCA	xx days
Selection	MM/DD/YY
Responsibility determination	xx days
IFB or RFP \$500,000 Approval of Small, Small Disadvantage & Woman-Owned Subcontracting Plan	xx days
IFB or RFP - \$1 mil EEO Compliance Review	2 days
Award	MM/DD/YY

If You agree with the proposed acquisition plan, Please sign below and return one copy.

\_\_\_\_\_  
Contract Specialist

\_\_\_\_\_  
Requesting Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

### **Exhibit 3:     PROCUREMENT INTEGRITY SUMMARY FOR PROCUREMENT OFFICIALS**

#### **CERTIFICATIONS REQUIREMENT**

This summary provides information concerning the procurement integrity provisions, 41 U.S.C. 423, to enable procurement officials to sign the attached procurement integrity certification. The summary describes the relevant provisions of the law and high lights changes made when the law was amended in November 1989. A copy of the current law is attached. The interim rule implementing the law was published in the FEDERAL REGISTER on September 6, 1990 (FR). It replaces section 3.104 of the Federal Acquisition Regulation.

The law was suspended for the one year period beginning December 1, 1989 and ending November 30, 1990. Those who will serve the Government as procurement officials after the law again becomes effective must sign a certification stating that they are familiar with and will not engage in conduct prohibited by 423 (b), (c), and (e) and will report any information concerning a violation or possible violation of 423(a), (b), (d), or (f). Similar certifications signed prior to the suspension are legally insufficient to enable an individual to serve as a procurement official on or after December 1, 1990.

#### **"PROCUREMENT OFFICIALS" AND "COMPETING CONTRACTORS"**

Except for the prohibitions on disclosure of proprietary and source selection information that apply to anyone, prohibitions in the law apply to those who serve as procurement officials and to competing contractors. The term "procurement official,, refers to any officer or employee of an agency who has participated personally and substantially in any of the following with respect to a particular procurement:

- (i)     Drafting, or reviewing and approving, a specification or statement of work;
- (ii)    Preparation or development of a procurement or purchase request;
- (iii)   Preparation or issuance of a procurement solicitation;
- (iv)    Evaluation of bids or proposals or selection of sources;
- (v)     Negotiations to establish the price or terms and conditions of a contract or contract modification;
- (vi)    Review and approval of the award or modification of a contract.

The definition extends to contractors, subcontractors, consultants, experts and advisers acting on behalf of or providing advice to an agency with respect to a procurement. The interim regulations make it clear that one does not become a procurement official solely by performing clerical functions, by general technical, engineering or scientific efforts having broad application., or by reviewing procurement documents solely to determine compliance with regulatory, administrative and budgetary requirements and procedures.

The regulations also exclude participation on Federal advisory committees, agency level boards and panels and in studies conducted under OMB Circular A-76 procedures.

A "competing contractor" is an entity that is or is reasonably likely to become a competitor for a contract, or subcontract under the procurement and includes any other person acting on behalf of such an entity.

### **PROHIBITIONS DURING THE CONDUCT OF A PROCUREMENT**

Section 423(b) prohibits a procurement official, during the conduct of an agency procurement, from knowingly...

- Soliciting, discussing or accepting future employment or business opportunity with a competing contractor;
- Soliciting or accepting money, a gratuity or any other thing of value from a competing contractor;
- Disclosing proprietary or source selection information to any person not authorized to receive the information;

Section 423(a) imposes corollary restrictions upon a competing contractor giving gratuities to or discussing future employment with a procurement official and soliciting or obtaining proprietary or source selection information. There are civil fines for violations of the first two prohibitions and criminal and civil penalties for violation of the third. Federal employee also may be subject to administrative sanctions, including disciplinary action.

These prohibitions apply "during the conduct of a procurement." The conduct of procurement begins on the earliest date an authorized official directs that specific action be taken to initiate a procurement.

These actions are -

- (i) Drafting a specifications or a statement of work;
- (ii) Review and approval of a specification;
- (iii) Requirements computation at an inventory control point;
- (iv) Development of procurement or purchase requests;
- (v) Preparation or issuance of a solicitation;
- (vi) Evaluation of bids or proposals;
- (vii) Selection of sources;
- (viii) Conduct of negotiations or
- (ix) Review and approval of the award of a contract or contract modification.

The conduct of a procurement ends with award of a contract or cancellation or the procurement, or upon execution of modification that adds new work to a contract.



The phrase, "gratuity or other thing of value, is defined to include any gift, favor, entertainment, transportation, lodgings, meals, services, training, or other item having monetary value. It does not include (1) any unsolicited item having a market value of \$10 or less per event or presentation; (2) loans from banks and financial institutions; (3) discounts available to the general public; (4) plaques and certificates having no intrinsic value; (5) anything paid for by the Government, secured under Government contract or accepted by the Government under specific statutory authority; or (6) training to facilitate use of its products provided by a vendor whose products are furnished under Government contract. This definition reflects a change in the law.

## **RECUSAL IN ORDER TO DISCUSS EMPLOYMENT**

Section 423© allows some procurement officials, to obtain permission to withdraw from further participation in a procurement in order to discuss future employment with a competing contractor. This is a change in the law. An eligible procurement official may, in accordance with specific procedure in the interim regulations, request authorization to be recused from participation in the procurement. A procurement official is not eligible for recusal if, during the period beginning with the issuance of a procurement solicitation and ending with the award of a contract, he or she has participated personally and substantially in the evaluation of bids or proposals, the selection of sources, or the conduct of negotiations.

An individual may not commence discussions with a competing contractor until he or she has received written approval of the recusal request. Rejection of an officer's or employee's recusal request is not an adverse personnel action.

## **POST-EMPLOYMENT RESTRICTIONS**

Section 423(f) imposes two basic restrictions on employees who leave Federal service. An individual who was a procurement official with respect to a particular procurement may not:

- Participate in any manner on behalf of a competing contractor in any negotiations leading to the award or modification of a contract for such procurement; or
- Participate personally and substantially on behalf of the competing contractor in the performance of such contract.

Both restrictions apply for a period of two years from the date of the individuals last personal and substantial participation in the procurement on behalf of the government. Neither applies unless the individual was an officer or employee of the Government at the time he or she served as a procurement official.

These restrictions extend to post-employment activities on behalf of some subcontractors. They generally do not apply if the subcontract amount is less than \$100,000 or if participation is on behalf of a subcontractor below the second tier. However, the restrictions apply regardless of

dollar value and at any tier if the particular subcontractor significantly assisted the prime contractor in negotiation of the prime contract or if the employee recommended the particular subcontractor to the prime contractor as a source. The exclusion for participation on behalf of some subcontractors is a change in the law.

## **ADDITIONAL CERTIFICATION REQUIREMENTS**

Section (e) imposes a number of certification requirements in connection with contracts and modifications in excess of \$100,000.00. It requires:

- Any procurement official who leaves the Government during the conduct of a specific procurement to certify that he or she understands the continuing obligation not to disclose proprietary or source selection information;
- Anyone participating personally and substantially in the preparation of submission of the competing contractor's offer to certify that he or she is familiar and will comply with 423(a) and will report any information concerning a violation or possible violation of 423(a), (b), (d), or (f) to the individual responsible for preparing the offer;
- The officer or employee of the competing contractor responsible for its offer to certify that the above certifications have been obtained and that he or she has no information concerning a violation or possible violation of 423(a) (b), (d), or (f) or has disclosed such information to the contracting officer;
- The contracting officer to certify that he or she has no information concerning a violation or possible violation of 423(a), (b), (d), or (f) or has disclosed all information to the head of the agency; and
- Any procurement official or competing contractor to make such additional certifications as to violations or possible violations of 423(a), (b), (d), or (f) as may be required by the head of the agency.

## **APPLICABILITY**

Section 423 originally became law on July 16, 1989. It was amended in November 1989, and was suspended for one year beginning December 1, 1989 and ending November 30, 1990. The amended law becomes effective December 1, 1990, and applies to conduct occurring on or after that date. Most employees will not become subject to the law's prohibitions unless they participate in a procurement on or after December 1, 1990, and thereby become procurement officials. Participation in a procurement during the suspension does not make one a procurement official for any purpose. However, someone who was a procurement official during the original effective period of the law from July 16, 1989 through November 30, 1989, may be subject to the statutory prohibitions on or after December 1, 1990, if his or her participation during the original effective period meets the current definition of the term "procurement official." For example, an employee who last participated in a source selection panel for a procurement on July 20, 1989, remains subject to the post-employment restrictions for a two- year period, through July 20, 1991. Also, if that procurement has not been concluded by December 1, 1990, the employee on that date again becomes subject to the prohibitions on gratuities, employment discussions and disclosure of proprietary and source selection information even though he or she does not participate in the procurement on or after December 1, 1990. The prohibitions continue to apply until the procurement is concluded.

## **ETHICS**

An employee or former employee who is uncertain whether specific conduct would violate the law may request an advisory opinion from his or her agency ethics official. This is a change in law. Advisory opinions may not be obtained for the purpose of determining whether certain information is proprietary or source selection information, whether such information may be disclosed, or whether, prior to bid opening or receipt of proposals, a particular entity is a competing contractor. Questions regarding the character and disclosure of information should be directed to the contracting officer. The regulations provide that a procurement official, after making an appropriate inquiry, may rely upon representations made by an entity as to whether it is a competing contractor.

#### **Exhibit 4: BASIC GUIDELINES - PURCHASE REQUEST PREPARATION**

- Make sure that actual needs are stated clearly, fully and accurately. The more complete and precise the purchase request package, the greater the probability that the acquisition process will function responsively. A hastily constructed package that omits information or contains ambiguities will delay the contracting process. The Contracting officer may have to return a deficient request for revisions, or for clarification or additional information, before initiating the purchase. Deficiencies not remedied could cause difficulties throughout the contracting process and during the life of the contract.
- Make sure that the requirement is described in accordance with two basic precepts that govern Federal contracting:
  - Specifications or statements of work should set forth actual requirements- what it is necessary to have, not what it would be nice to have.
  - Purchase Requests-particularly the portions specifying requirements should be designed to elicit both the widest possible extent of competition and the greatest effectiveness of completion.  
The description of the requirement should be definitive but not unduly restrictive. It should provide information that enables sources to compete knowledgeably and confidently, on an equal footing.
- Tailor the purchase request to the requirement. A large or complex requirement will ordinarily involve greater detail than a limited or routine need.
- Have the request prepared well in advance of the dates on which contract award and initiation of contract performance is required or desired.
- Review the purchase request before submission to ensure that such details as the following have not been omitted:
  - Necessary signatures
  - Funding code or authorization
  - Cost estimate
  - Reference materials for use in solicitation document or proposal preparation

**Exhibit 5: CHECKLIST FOR DETERMINING SPECIFICATION/WORK  
STATEMENT AND PURCHASE REQUEST ADEQUACY**

1. Is there a clear description of the supplies or services to be furnished? Are quantities or periods of performance shown?
2. Have delivery or performance requirements been spelled out?
3. Has the program official included technical evaluation criteria that are relevant and not restrictive of competition? Will the proposed plan for scoring proposals result in a fair evaluation?
4. Has technical data that the contractor must include in his or her proposal been enumerated? Does that data correlate with the evaluation criteria?
5. Will the contractor require access to a Government facility or use of Government-furnished property? If so, is the facility and property appropriately identified?
6. Are any recommended special provisions or clauses recommended pertinent and reasonable?
7. What sources have been recommended? Have previous acquisitions been made from any of the sources?
8. Have requirements and schedules for technical data reporting (e.g., technical progress report) been enumerated?
9. Have all required reviews and approvals been obtained?
10. Is there evidence of a proper citation and commitment of funds, signed by the appropriate official?
11. Are Privacy Act requirements applicable?
12. Have subcontracting opportunities for small disadvantaged business been identified?
13. Are adequate technical proposal instructions, for format and content, provided?
14. Regarding the specification or statement of work:
  - a. Does the statement of work contain only essentials (actual minimum requirements)? Have "nice to have" items been eliminated?
  - b. Has extraneous material been eliminated? (Ask the following questions to judge whether material should be included: Does it tell what the contractor is responsible for? Is it necessary in order to obtain required results?)
  - c. Is background or other introductory information readily distinguishable from the contract objectives and requirements?
  - d. Are directions readily distinguishable from general information?
  - e. Is the statement of work sufficiently detailed to permit the prospective contractor to estimate costs? To tabulate the labor and other resources needed to accomplish each task or phase of the work?
  - f. Are specific duties and end results set forth in such a way that the contractor will know exactly what is required? That the agency representative who monitors performance?
  - g. Does the statement of work explain the interrelationship between tasks, and how tasks are related to desired results and deliverables?
  - h. Does the statement of work identify constraints and limitations?
  - i. Does the statement of work contain standards which will make it possible for all parties to measure performance?

- j. Is there a time-phased requirement for each activity to be completed or item to be delivered? If elapsed time is used, is it clear whether the time will be counted as calendar days or as work days?
  - k. Have all requirements for data been specified?
  - l. Are proper quantities shown?
  - m. Do any standard specifications or paragraphs apply in whole or in part? If so, are the properly cited and referenced?
  - n. When it is necessary to reference other documents, is the reference document properly described and properly cited?
  - o. Has the document been carefully screened? Is all of it pertinent or should only portions be referenced? Is the material cross-referenced to the applicable part of the work statement?
  - p. Are reporting requirements (technical and progress/ compliance) clear? Having timing, content, and level of detail been specified?
  - q. If a competitively negotiated contract is planned, are the task descriptions an adequate frame of reference for the offerors, technical proposals? Is the statement of work sufficiently detailed to permit equal understanding by all offerors?
15. Does it require the contractor to establish and maintain a Quality Control System?
16. Does it indicate whether or not Government property or material will be furnished?
17. Is appropriate contract administration information and requirements included?

Exhibit 6

## **Contracting Process**

**RECEIVE/ASSIGN REQUISITION**

**ENTER INTO TRACKING SYSTEM**

**REVIEW REQUIREMENT**

**DEVELOP/ENHANCE SPECIFICATIONS**

**SOURCES SOUGHT SYNOPSIS IN CBD**

**MARKET RESEARCH**

**DETERMINE AVAILABILITY OF COMMERCIAL ITEMS**

<b>Approvals/Clearances</b> OSDBU	<b>DETERMINE SET ASIDES</b>
<b>Approvals/Clearances</b> Use of Negotiation	<b>DETERMINE CONTRACT METHOD/TYPE</b>
<b>Approval/Clearances</b> Advanced Acq. Plan Other than Full and Open Competition Advisory and Assistance Source Selection Authority	<b>DEVELOP ACQUISITION PLAN</b>

**SYNOPSISIZE/TRANSMIT ACQUISITION IN CBD**

**DEVELOP BIDDER'S LIST**

<b>Approvals/Clearances</b> OGC Legal Review Source Selection Authority Program Official/CO Concurrence Contract Review Board	<b>DEVELOP SOLICITATION</b>
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**ISSUE/RELEASE SOLICITATION**

**ANSWER INQUIRIES FROM POTENTIAL OFFEROR'S**

**BID OPENING/RECEIPT OF OFFERS**

**EVALUATE BIDS/OFFERS**

<b>SEALED BID METHOD</b>	<b>NEGOTIATED METHOD</b>
<b>Price Analysis</b>	<b>Technical Evaluation</b>
<b>Determine Responsiveness</b>	<b>Cost or Price Analysis</b>
	<b>Determine Competitive Range</b>
	<b>Negotiations</b>
	<b>Best and Final Offers</b>
	<b>Final Technical Evaluation</b>

**RESPONSIBILITY DETERMINATION**

<b>Approvals/Clearances</b> Contract Review Board Program Concurrence Source Selection Authority Subcontract Plan EEO Compliance Review	<b>AWARD RECOMMENDATION</b>
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**AWARD CONTRACT**

**SYNOPSISIZE CONTRACT AWARD IN CBD**

**SF-279 REPORT**

**CONTRACT ADMINISTRATION**



## Exhibit 7

### Proposed Contracts for Advisory and Assistance Services

The following information should be provided for each proposed contract for advisory and assistance services over 25,000:

1. Name, agency, office address, and telephone number of person to contact about the proposed procurement.
2. Describe the services to be performed, including any deliverables to be provided. Attach a copy of the statement of work, if one has been prepared.
3. What is the total amount of time for completion of the project?
4. What is the total estimated cost of the project (including cost options of out years)?
5. Is funding available for this requirement? Please provide documentation showing that funds are available for the initial period of the requirement. If funds have not yet been made available for the requirement, explain how the proposed contract will be funded.
6. Why cant the required services be performed by government personnel?
7. What program objectives will be served by award of the proposed contract? What negative consequences are anticipated if the proposed contract is not awarded?
8. If similar or related work has been performed previously for the same project of program, please describe the services performed and the relationship to the current request.
9. Is it intended that the contract is to be awarded on a sole-source basis? If so, please justify why the contract must be awarded sole-source.
10. If the answer to question 9 is "No," have you identified a particular company or individual whom you are recommending to provide the services?
11. If the answer to either question 9 or 10 is "Yes"--
  - a. Please provide the name and business address of the individual or company (the vendor).
  - b. Please describe any contacts which have occurred between the vendor and USDA employees concerning the proposed contract. Such contacts include correspondence received from the vendor as well as discussions of correspondence between the vendor and the agency or mission area.
  - c. Has the vendor already done any work on the project, such as drafting a description of the requirement? If so, please describe the vendor's current involvement with the project.
12. If subcontractors are anticipated, will the prime contractor be required to direct work to a particular individual or company? Directed subcontracts are not favored because they restrict competition, may interfere with the prime contractor's independent judgment, and may increase the Government's risk from a business standpoint. If you nevertheless intend to direct subcontract work to a particular source or sources, please justify why you intend to do so.
13. Is there any possibility of the appearance of a personal or organizational conflict of interest if award is made to the recommended individual or company? If so, please explain. An organizational conflict of interest "means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government; the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage." (Federal Acquisition Regulation (FAR) 9.501)
14. If the proposed contract of requirement was not submitted within the schedule for quarterly review, please also explain why this requirement was not included in the list advisory and assistance services contracts submitted for this fiscal quarter.

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Mission Area: \_\_\_\_\_

**SUMMARY OF PLANNED ACQUISITIONS**

Agency Name: \_\_\_\_\_

DATE: \_\_\_\_\_

REFERENCE	TYPE OF SERVICE (Describe Service)	ESTIMATED TIME TO COMPLETE PROJECT	ESTIMATED COST OF PROPOSED CONTRACT	COMPETITIVE (Yes/No)	NAME OF PROPOSED CONTRACTOR (If Known)

**Certify that these services are necessary to meet program objectives.**

Agency Contact: \_\_\_\_\_

Approved By: \_\_\_\_\_

**Deputy Administrator/  
Program Director**

Telephone Number: \_\_\_\_\_

\_\_\_\_\_  
**Agency Head**

\_\_\_\_\_  
**Subcabinet Office**

**PRESS HARD - You are making 4 copies**

USDA-APHIS

**CONTRACT DELIVERY RECEIPT**

**COPY DISTRIBUTION**

White - Financial Services - MRP-MBS, Minneapolis  
Canary - Contracting Officer - MRP-MBS, Minneapolis OR Procurement and Engineering  
Branch, ASD, Hyattsville  
Pink - Retain for your Record  
Goldenrod - (NEC items only) - Property Services MRP-MBS, Minneapolis

1. CONTRACT NO.

2. FINANCIAL DATA CODE

3. NAME AND ADDRESS OF CONTRACTOR

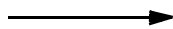
4. NAME AND ADDRESS OF CONSIGNEE

FTS PHONE NO.

**5. ITEM(S) RECEIVED** *(List ALL items received from partial delivery and complete delivery)*

ITEM NO.	DESCRIPTION OF SUPPLY OR SERVICE RECEIVED	QUANTITY RECEIVED	DATE RECEIVED

6. TYPE OF DELIVERY  
("X" One)



☐ PARTIAL DELIVERY

☐ COMPLETE DELIVERY

7. REMARKS

*I certify that the articles, and/or services indicated above have been received, inspected and accepted as complying with the contract terms and conditions (except as noted under "Remarks") as of the data shown below.*

8. SIGNATURE OF AUTHORIZED OFFICIAL

9. TYPED OR PRINTED NAME AND TITLE

10. DATE THIS RECEIPT  
DISTRIBUTED